Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 78-188

MELLON BANK, N.A., PETITIONER,

versus

SOUTHLAND MOBILE HOMES OF SOUTH CAROLINA, INC.

and

ASSOCIATES FINANCIAL SERVICES COMPANY, INC., RESPONDENTS.

BRIEF OF RESPONDENT, SOUTHLAND MOBILE HOMES OF SOUTH CAROLINA, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

M. M. WEINBERG, JR.,
OF COUNSEL,
ROBERT W. BROWN,
WEINBERG, WARNER, BROWN & McDOUGALL,
P. O. Box 1289,
Sumter, South Carolina 29150
(803) 775-1274,
Counsel for Respondent,
Southland Mobile Homes of South Carolina, Inc.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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QUESTION PRESENTED

I

Do the State Court decisions rest on an adequate and independent state ground as to the Respondent, Southland Mobile Homes?

ARGUMENT

I

Do the State Court decisions rest on an adequate and independent state ground as to the Respondent, Southland Mobile Homes?

Respondent, Southland Mobile Homes, asserts that this is not a proper case in which this Court should exercise its discretionary power of review. The longstanding, controlling, jurisdictional principle has been applied in numerous cases, and *Herb v. Pitcairn,* 324 U. S. 118, 65 S. Ct. 459 39 L. Ed. 789 (1944) succinctly states it as follows:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. *Murdoch v. Memphis,* 20 Wall, 590, 636, 22 L. Ed. 429; *Berea College v. Kentucky,* 211 U. S. 45, 53, 29 S. Ct. 33, 34, 53 L. Ed. 81; *Enterprise Irrigation District v. Farmers' Mutual Canal Co.,* 243 U. S. 157, 164, 37 S. Ct. 318, 320, 61 L. Ed. 644; *Fox Film Corp. v. Muller,* 296 U. S. 207, 56 S. Ct. 183, 80 L. Ed. 158. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion. . . . 324 U. S. at 125, 126.

Petitioner, Mellon Bank, in its Petition for Writ of Certiorari maintains that "This case presents novel and important questions involving the application of federal

jurisdictional and venue statutes pertaining to transitory actions against national banks in state court." (Pet. 5.) Without conceding that such assertion has substantive validity as to either of the Respondents, it certainly does not illuminate the status of Mellon Bank in this litigation insofar as Southland Mobile Homes is concerned.

The Opinion of the South Carolina Supreme Court that is applicable to Southland Mobile Homes (Pet. 15, 16) affirms a lower court's (Circuit Court's) decision that Mellon Bank's appeal to the State Supreme Court from a prior Circuit Court's order (holding Mellon Bank subject to suit in South Carolina by both Southland Mobile Homes and Associates Financial Services) should be dismissed as to Southland Mobile Homes for failure to timely perfect its appeal as to it. Mellon Bank's Petition (Pet. 4, 5) clearly sets forth the status of the litigation below and the status of the respective parties. Section 18-9-70, Code of Laws of South Carolina, (1976) and Circuit Court Rule No. 49, relied on by the Circuit Court and the Supreme Court in dismissing Mellon Bank's appeal as to Southland Mobile Homes, are quoted in the Appendix to this Brief. (App. 9.)

In sum total, Mellon Bank failed to adhere to correct state appellate procedures in its quest to seek review by the State's highest appellate court of a lower court's decision which Mellon Bank now maintains involve adverse rulings on important federal questions and rights. As a result, Mellon Bank waived its appeal rights, and the Circuit Court and the State Supreme Court had no alternative but to dismiss Mellon Bank's appeal. Cf. *Associated Petroleum Carriers v. Mutual Properties, Inc.,* 235 S. C. 195, 110 S. E. (2d) 861 (1959).

Is not the fact that Mellon Bank failed to perfect its appeal to the State Supreme Court as to Southland Mobile

Homes an adequate and independent non-federal ground precluding further review by this Court and justifying denial of its Petition for Writ of Certiorari, at least as to this Respondent?

A distinction between state substantive grounds and state procedural grounds has been recognized by this Court, and *Henry v. State of Mississippi,* 379 U. S. 443, 85 S. Ct. 56, 13 L. Ed. (2d) 408 (1964), contains probably the clearest statement of the same:

> . . . These cases settle the proposition that a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the state's insistence on compliance with its procedural rule serves a legitimate state interest. In every case we must inquire whether the enforcement of a procedural forfeiture serves such a state interest. If it does not, the state procedural rule ought not be permitted to bar vindication of important federal rights." 379 U. S. at 447, 448.

Assuming for the sake of argument that Mellon Bank has federal rights that were not vindicated in the State Courts as to Southland Mobile Homes, it would be patently ridiculous to say that the State appellate procedural requirements ignored by the Bank do not serve a legitimate state interest. Requirements such as those contained in Circuit Court Rule No. 49 and § 18-9-70 are, obviously, absolutely necessary to facilitate and expedite the orderly handling of appeals, as shown by the somewhat analogous requirements concerning review by this Court. (Cf. Rules of Supreme Court Nos. 11, 13 and 22; 28 U. S. C. § 2101.) Had Mellon Bank availed itself of the opportunity, it could have applied for and possibly been granted relief from its procedural defaults at the state level. Cf. §§ 18-1-100, 18-9-110 and 18-9-120, Code of Laws of South Carolina (1976). (App. 10); *Associated Petroleum Carriers v. Mutual Properties, Inc., supra.*

This Court has previously held that where a petitioner's failure to follow the correct state appellate route (*i. e.,* failure to select the right appellate court) results in dismissal of the state appeal by a state's highest appellate court, the decision of the state court would rest on such an adequate and independent non-federal ground as to deprive this Court of jurisdiction. *Parker v. People of State of Illinois,* 333 U. S. 571, 68 S. Ct. 708, 92 L. Ed. 886 (1948); *Central Union Telephone Co. v. City of Edwardsville,* 269 U. S. 190, 46 S. Ct. 90, 70 L. Ed. 229 (1925). Mellon Bank's admitted failure to adhere to South Carolina's well defined appellate procedures justified the South Carolina Supreme Court's (and the Circuit Court's) dismissal of its appeal, and such dismissal under the circumstances likewise constitutes an adequate and independent state ground for this Court to decline review as to Southland Mobile Homes.

CONCLUSION

For the reasons set forth in the preceding argument, the Respondent, Southland Mobile Homes of South Carolina, Inc., submits that the Writ of Certiorari should be denied as to it.

Respectfully submitted,

M. M. WEINBERG, JR.,
OF COUNSEL,
ROBERT W. BROWN,
WEINBERG, WARNER, BROWN
& McDOUGALL,
P. O. Box 1289,
Sumter, South Carolina 29150.

APPENDIX

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S. C. CIRCUIT COURT RULE NO. 49

Mode of preparing a case on appeal

In every appeal to the Supreme Court from matter appealable, the appellant, or his attorney shall within ten days after written notice of the filing of such matter appealable, or, if filed within term time, within ten days after the rising of the Circuit Court, give written notice to the opposite party, or his attorney, of his intention to appeal therefrom, and within thirty (30) days after such notice the appellant, or his attorney, shall prepare a case or exceptions, or a case containing exceptions (which exceptions shall have been taken and served within the time prescribed by law), and serve them on the opposite party, or his attorney, or within such further time as, upon ten (10) days' notice to the opposite party, or his attorney, the Judge who tried the cause may for good cause grant. But should the parties within the time above named, be unable to agree upon a case, then the proposed case, with the proposed amendments, and allowances and disallowances, shall be within ten days after failing to agree, referred for settlement to the Circuit Judge who heard the cause, who shall settle the same within the time and in the manner provided for settling a case in Rule 47.

The parties, if they agree on a case, or the Circuit Judge who may settle the same, must see that the case shall, as to the matter it contains, conform to the requirements of the Rules of Supreme Court in regard to the form and substance of a case for hearing before that Court.

S. C. CODE § 18-9-70 (1976).

Case and exceptions; objections; settlement.

Within thirty days after giving such notice the appellant or his attorney shall prepare a case with exceptions and serve them on the opposite party or his attorney. The respondent within ten days after service of such case may propose any objections thereto or alterations thereof, and the case shall be settled in such mode as may be provided in the rules of the Supreme Court.

S. C. CODE § 18-1-100 (1976).

Amendment to cure failure to perfect appeal.

When a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings the court may permit an amendment on such terms as may be just.

S. C. CODE § 18-9-110 (1976).

Extending time for certain steps in appeals.

The time for taking any step or proceeding in the preparation and perfection of an appeal from a circuit court to the Supreme Court, as now prescribed by law, except the time of giving notice of appeal to the opposite party, may be extended by the judge who heard the cause or by any one of the justices of the Supreme Court, upon four days' notice of such motion being first given to the opposite party.

S. C. CODE § 18-9-120 (1976).

Correction of inadvertent failure to perfect appeal.

When any party shall omit, through mistake or inadvertence, to do any act necessary to perfect an appeal or to stay proceedings, the Supreme Court may, in its discretion, permit such act to be done at any time to perfect the appeal on such terms as may be just, if the court shall be satisfied that the appeal was taken bona fide and if notice of the appeal was given as required by law.